

STATE OF MICHIGAN  
IN THE SUPREME COURT  
Appeal from the Michigan Court of Appeals  
Donald S. Owens, Jane E. Markey, Deborah A. Servitto

*IN RE* APPLICATION OF MICHIGAN ELECTRIC  
TRANSMISSION COMPANY FOR  
TRANSMISSION LINE

---

CHARTER TOWNSHIP OF OSHTEMO

Appellant,

v

MICHIGAN ELECTRIC TRANSMISSION  
COMPANY, LLC

Petitioner-Appellee,

and

MICHIGAN PUBLIC SERVICE COMMISSION,  
Appellee.

---

Supreme Court No. 150695

Court of Appeals No. 317893

MPSC No. U-17041

**SUPPLEMENTAL BRIEF ON APPEAL OF APPELLEE  
MICHIGAN PUBLIC SERVICE COMMISSION**

Bill Schuette  
Attorney General

Aaron D. Lindstrom (P72916)  
Solicitor General

Matthew Schneider (P62190)  
Chief Legal Counsel

B. Eric Restuccia (P49550)  
Counsel of Record

Steven D. Hughey (P32203)  
Lauren D. Donofrio (P66026)  
Assistant Attorneys General  
Attorneys for Appellee MPSC  
7109 W. Saginaw Hwy., 3<sup>rd</sup> Fl.  
Lansing, MI 48917  
Telephone: (517) 284-8140

Dated: October 14, 2016

# TABLE OF CONTENTS

	<u>Page</u>
Table of Contents .....	i
Index of Authorities .....	ii
Statement of Question Presented .....	v
Introduction .....	1
Argument .....	2
I. METC is not a public utility for the purposes of Article 7, § 29 of the Michigan Constitution. ....	2
A. A public utility is a state-regulated private company that provides a service or commodity to the public. ....	3
B. Transmission service did not exist in Michigan in 1963. ....	8
II. As METC is not a public utility, this Court need not address the question whether the Certification Act is constitutional. ....	12
Conclusion and Relief Requested .....	14

## INDEX OF AUTHORITIES

### Cases

<i>Bradly v Lithonia R Co</i> , 92 SE 539 (Ga 1917).....	7
<i>Bridle Bit Ranch Co v Basin Elec Power Co-op</i> , 118 P3d 996 (Wy 2005) .....	5
<i>Cawker v Meyer</i> , 133 NW 157 (Wisc 1911).....	7
<i>City of Taylor v The Detroit Edison Co</i> , 475 Mich 109 (2006) .....	13, 14
<i>Colorado Utilities Corp v Pub Utilities Comm’n</i> , 61 P2d 849 (Colo 1936).....	6
<i>Consumers Power Co v Pub Serv Comm’n</i> , 460 Mich 148 (1999) .....	8, 9
<i>Ford Hydro-Elec Co v Town of Aurora</i> , 240 NW 418 (Wis 1932).....	7
<i>Goldstone v Bloomfield Tp Pub Library</i> , 479 Mich 554 (2007) .....	3
<i>Hawkeye Land Co v Iowa Utilities Bd</i> , 847 NW2d 199 (Iowa 2014).....	5
<i>Holder v Mississippi Fuel Co</i> , 317 So 2d 891 (Miss 1975) .....	6
<i>Humbird Lumber Co v State Pub Utilities Comm’n</i> , 228 P 271 (Idaho 1924) .....	7
<i>Illinois Commerce Comm’n v Fed Energy Regulatory Comm’n</i> , 721 F3d 764 (CA 7 2013).....	12
<i>In re Proposal C</i> , 384 Mich 390 (1971) .....	3
<i>In re Wind Power Pac Investors</i> , 67 Haw 342 (1984) .....	5

<i>J &amp; J Const Co v Bricklayers &amp; Allied Craftsmen, Local 1</i> , 468 Mich 722 (2003) .....	13
<i>MacLean v Michigan State Bd of Control for Vocational Ed</i> , 294 Mich 45 (1940) .....	13
<i>Mississippi Power &amp; Light Co v Mississippi ex rel Moore</i> , 487 US 354 (1988) .....	10, 11
<i>Mississippi River Fuel Corp v Illinois Commerce Corp</i> , 1 Ill 2d 509 (1953) .....	6
<i>New York v FERC</i> , 535 US 1 (2002) .....	10, 12
<i>People v Powell</i> , 280 Mich 699 (1937) .....	4
<i>People v Riley</i> , 465 Mich 442 (2001) .....	13
<i>Pub Utilities Comm v Colorado Interstate Gas Co</i> , 351 P2d 241 (Colo 1960).....	6
<i>Transmission Access Policy Study Group v FERC</i> , 225 F3d 667 (2000) .....	8
<i>Van Hoosear v State R Comm</i> , 194 P 1003 (Cal 1920) .....	7
<i>Wilhite v Pub Serv Comm'n</i> , 150 W Va 747 (1966) .....	6
<b>Statutes</b>	
16 USC § 824 <i>et seq</i> .....	10
16 USC § 824(a) .....	10
16 USC § 824(b)(1) .....	12
MCL 460.10w(1) .....	11
MCL 460.551 <i>et seq</i> .....	8
MCL 460.561 <i>et seq</i> .....	1, 12, 13

MCL 460.570(1) .....	1, 12, 13
----------------------	-----------

## **Constitutional Provisions**

Const 1963, art 7, § 29 .....	passim
-------------------------------	--------

## **Other Authorities**

1 Official Record, Constitutional Convention 1961 .....	7
51 C J <i>Public Utilities</i> § 2 .....	4
73B C J S <i>Public Utilities</i> § 3 .....	5
FERC Order 888–A, 62 Fed Reg 12274 (March 14, 1997) .....	9
FERC Order No. 888, 61 Fed Reg 21540 (May 10, 1996) .....	9, 10
Richard F. Vander Veen, <i>Michigan Is Now Entering A New Electrical Energy Field: Competition</i> , Mich BJ 164 (1999) .....	10
Webster’s Seventh New Collegiate Dictionary, (1963) .....	3, 4

### STATEMENT OF QUESTION PRESENTED

1. Is METC a public utility for the purposes of the first sentence of Article 7, § 29 of the Constitution of 1963?

Appellant's answer: Yes.

Appellee MPSC's answer: No.

Appellee METC's answer: No.

The Court of Appeals did not answer this question.

## INTRODUCTION

The Court has asked for supplemental briefing on the question whether Petitioner-Appellee Michigan Electric Transmission Company (METC) is a public utility for purposes of Art 7, § 29 of the Michigan Constitution of 1963. The Michigan Public Service Commission (Commission or MPSC) submits that, for this limited purpose, METC is not a public utility. The first clause of the first sentence of Art 7, § 29 addresses a municipality's right to grant or withhold consent to a public utility's use of its streets and public places:

No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any county, township, city or village for wires, poles, pipes, tracks, conduits or other utility facilities, without the consent of the duly constituted authority of the county, township, city or village...

Thus, for this section to apply here, METC must be a public utility. However, METC is not a public utility under Art 7, § 29. As METC is not a public utility for the purposes of this provision of the Michigan Constitution, and the first sentence of Art 7, § 29 is not implicated, this Court need not reach the question whether the Electric Transmission Line Certification Act (the Certification Act), MCL 460.561 *et seq.*, specifically MCL 460.570(1) thereof, unconstitutionally conflicts with the first sentence in Art 7, § 29.

## ARGUMENT

### **I. METC is not a public utility for the purposes of Article 7, § 29 of the Michigan Constitution.**

A public utility is generally understood as a state-regulated privately owned business that provides a public service indiscriminately to all members of the public. Transmission service, which is the transmission of a third party's electricity to a public utility, does not qualify as a public service, nor does a purveyor of that service constitute a public utility, because the business does not provide its service to the public.

When the people of Michigan ratified the Constitution of 1963, they did not contemplate transmission service, because transmission service did not exist in 1963. Certainly, public utilities possessed transmission assets, but did not provide commercial transmission services. Rather, transmission lines were merely a part of a vertically integrated public utility's distribution system used to get electricity from their generation assets to their distribution assets, enabling them to deliver electricity to the public. Michigan public utilities did not provide commercial transmission services (i.e. sale of the service of transmitting someone else's electricity over the public utility's transmission lines) until 1996, and then only did so under 2001 when Michigan required its public utilities to divest their transmission assets. As such, transmission service cannot be a public utility under Art 7, § 29.



**A. A public utility is a state-regulated private company that provides a service or commodity to the public.**

When interpreting the meaning of a provision of Michigan's Constitution, this Court has explained that:

[O]ur primary objective is to realize the intent of the people by whom and for whom the constitution was ratified. That is, we seek the common understanding of the people at the time the constitution was ratified. This involves applying the plain meaning of each term used at the time of ratification, unless technical, legal terms are used. [*Goldstone v Bloomfield Tp Pub Library*, 479 Mich 554, 558–59 (2007) (citations and internal quotation marks omitted).]

If the provision's meaning remains unclear, "to clarify meaning, the circumstances surrounding the adoption of a constitutional provision and the purpose sought to be accomplished may be considered." *In re Proposal C*, 384 Mich 390, 405 (1971).

Thus, the issue is what did the people understand the term 'public utility' to mean in 1963. The conclusion that METC is not a "public" utility because it does not extend a service to the public is supported by the Constitution's plain language, Michigan case law, and other federal and state court decisions.

In order to determine the common understanding of the people who ratified the Constitution, a court may look first to the definition of a term in a dictionary from the time of ratification. Webster's Seventh New Collegiate Dictionary, published in 1963, defined a public utility as "a business organization (as a public-service corporation) performing some public service and subject to special governmental regulation." The same dictionary defines public service as "1: the business of supplying some commodity (as electricity or gas) or service (as transportation) to any or all members of a community."

Under the forgoing definition of public utility, METC is not a public utility. This is because METC does not provide a public service, and the state (via the MPSC) does not regulate METC. METC does not provide a public service in that it does not supply a commodity or service “to any or all members of a community” or in other words, to the public. Webster’s Seventh New Collegiate Dictionary (1963). This understanding is in accord with that found in Corpus Juris, which explained that in determining whether a business was a public utility:

The test is, therefore, whether or not such person holds himself out, expressly or impliedly, as engaged in the business of supplying his product or service to the public, as a class, or to any limited portion of it, as contradistinguished from holding himself out as serving or ready to serve only particular individuals. [51 C J *Public Utilities* § 2, p 5.]

METC does not supply its service to the public. Rather, METC transmits electricity only *to public utilities*, which then deliver that electricity to the public.

This dictionary definition also matches this Court’s understanding of the question whether a business sells a product to the public. In *People v Powell*, 280 Mich 699, 704–706 (1937), this Court ruled that the public or private character of an enterprise depends upon whether it is open to the use and service of all members of the public who may require it. *Id.* at 707 (“the word ‘public’ must be construed to mean more than a limited class defined by the relation of landlord and tenant, or nearness of location, as neighbors, or more.”). METC does not provide transmission service to the public in general, and certainly not to the use and service of all members of the public who may require it. *Id.* Moreover, METC only provides transmission services to public utilities like Consumers Energy or DTE Electric. It is these public utilities, not METC, that provide a regulated service to the public.

Like Michigan, many states have recognized the distinction that an enterprise is not a public utility unless it is providing a commodity or service to the public in general, rather than serving only particular entities. Recently, the Iowa Supreme Court examined the question whether ITC Midwest (METC's sister company) was a public utility. *Hawkeye Land Co v Iowa Utilities Bd*, 847 NW2d 199, 214 (Iowa 2014). The court defined a "public utility" as any person, partnership, business association, or corporation, domestic or foreign, owning or operating any facilities for . . . [f]urnishing . . . electricity to the public for compensation." *Id.* The court explained that "ITC Midwest does not furnish electricity directly to the public, but rather, delivers it to electrical utilities who in turn furnish the electricity to end users such as homes and other buildings." *Id.* Thus, it found that "ITC Midwest is not a public utility because it does not furnish electricity to the public." *Id.* at 215. METC and its sister company ITC Midwest provide identical services, albeit in different locations. This Court should reach the same conclusion as did the Iowa Supreme Court and find that METC does not provide services to the public.

Other state courts have reached similar conclusions. See, e.g., *Bridle Bit Ranch Co v Basin Elec Power Co-op*, 118 P3d 996, 108-109 (Wyo 2005) (Electricity wholesaler was not a public utility because it did not "directly sell or transmit electricity 'to or for the public.' Rather, Basin sells electricity wholesale and it is only PRECorp that makes sales or transmits the electricity 'to or for the public.'"); *In re Wind Power Pac Investors*, 67 Haw 342, 345 (1984), quoting 73B C J S *Public Utilities* § 3 ("The test is, therefore, whether or not such person holds himself out,

expressly or impliedly, as engaged in the business of supplying his product or service to the public, as a class, or to any limited portion of it, as contradistinguished from holding himself out as serving or ready to serve only particular individuals.”); *Holder v Mississippi Fuel Co*, 317 So 2d 891, 892 (Miss 1975) (gas supplier “is not a public utility because its transmission of gas through the proposed pipeline in question was not ‘to the public’ but to only one customer, Mississippi Power Company.”); *Pub Utilities Comm v Colorado Interstate Gas Co*, 351 P2d 241, 248 (Colo 1960) (In determining natural gas supplier was not a public utility the court applied “the almost universally accepted test, which summarized is, that to fall into the class of a public utility, a business or enterprise ...must hold themselves out as serving or ready to serve all members of the public.”) *Wilhite v Pub Serv Comm’n*, 150 W Va 747, 762 (1966) (“The mere fact that a product which is usually dispensed or sold by a utility to the public is being furnished does not make every person, firm, or corporation selling such product a public utility. If . . . the seller does not hold himself out to sell such product to the public or render some service to the public he is not a public utility.”); *Mississippi River Fuel Corp v Illinois Commerce Corp*, 1 Ill 2d 509, 516 (1953) (“The mere fact that the thing sold by a company is water or gas or electricity or telephone service, such as are ordinarily sold by public utility companies, does not of itself render the seller a public utility.”); *Colorado Utilities Corp v Pub Utilities Comm’n*, 61 P2d 849, 853 (Colo 1936) (Company was not a public utility where it “was not operating for the purpose of supplying electrical energy to the public.”); *Ford Hydro-Elec Co v Town*

*of Aurora*, 240 NW 418, 420–21 (Wis 1932) (The question is whether the plant is built and operated to furnish power to the public generally.”) *Humbird Lumber Co v State Pub Utilities Comm’n*, 228 P 271, 273 (Idaho 1924); *Van Hoosear v State R Comm*, 194 P 1003, 104 (Cal 1920) (“The test to be applied is whether or not the petitioner held himself out, expressly or impliedly, as engaged in the business of supplying water to the public as a class, not necessarily to all of the public, but to any limited portion of it, such portion, for example, as could be served by his system, as contradistinguished from his holding himself out as serving or ready to serve only particular individuals, either as a matter of accommodation or for other reasons peculiar and particular to them.”); *Bradly v Lithonia R Co*, 92 SE 539, 540 (Ga 1917); *Cawker v Meyer*, 133 NW 157, 158-159 (Wisc 1911).

Nor do the reports of the 1963 Constitutional Convention provide any contrary definition. “When we speak of public utilities, we must think of utilities as those services which municipalities or private enterprise provides in order to better serve their citizens.” 1 Official Record, Constitutional Convention 1961, p 997 (delegate Sleder). When Delegate Sleder referenced “citizens,” this is harmonious with dictionary references to the “public.”

METC does not hold itself out as serving the public and only serves regulated public utilities. METC does not have a MPSC-regulated duty to serve the public. Unlike DTE Energy or Consumers Energy, the electricity METC transmits is not open to the use of the public. As such, METC is not providing a “public

service” and cannot be a public utility. Thus, METC does not fall within the definition of a public utility, as commonly understood in 1963.

**B. Transmission service did not exist in Michigan in 1963.**

Furthermore, the common understanding of “public utility” could not have included transmission service in 1963, since this service did not exist in 1963. Since the turn of the century, vertically integrated public utilities provided all electric service in Michigan. “Vertically integrated” means that the utility generates the electricity, transmits it over its service territory, and delivers it to all members of the public in the utility’s service territory. “Historically, vertically integrated utilities...sold generation, transmission, and distribution services as part of a ‘bundled’ package.” *Transmission Access Policy Study Group v FERC*, 225 F3d 667, 681 (2000).

Public Act 106 of 1909, the Electric Transmission Act, MCL 460.551 *et seq* “was the Legislature’s first foray into the field of electricity generation and transmission.” *Consumers Power Co v Pub Serv Comm’n*, 460 Mich 148, 161 (1999). As understood by the Legislature, transmission in this context was merely an integral part of a utility getting its electricity to its customers, i.e. the public. MCL 460.551 provides:

When electricity is generated or developed by steam, water or other power, within 1 county of this state, and transmitted and delivered to the consumer in the same or some other county, then the transmission and distribution of the same in or on the public highways, streets and places, the rate of charge to be made to the consumer for the electricity so transmitted and distributed and the rules and conditions of service

under which said electricity shall be transmitted and distributed shall be subject to regulation as in this act provided.

Moreover, this Court has ruled that transmission under the Electric Transmission Act does not include transmission of a third party's electricity. "As used in § 1, the term "service" plainly refers to the utility's supplying its electricity to the end-user, not the use of its lines to transmit another provider's electricity." *Consumers Power Co*, 460 Mich at 163. This Court explained further that:

[U]nder any definition, the term "service" does not refer to a utility's transmission of electricity for another provider. To construe the phrase "conditions of service" as encompassing a requirement that one utility transmit another provider's electricity would require an interpretation that stretches well beyond the plain statutory language. [*Id.* at 164.]

Thus, as this Court ruled in *Consumers Power*, references to transmission in the Electric Transmission Act simply do "not confer the power to order a utility to transmit electricity for another provider." *Id.* at 165. This law was on the books in 1963, and had been since 1909, which supports the proposition that the general understanding of public utility in 1963 did not include transmission service, i.e. transmitting electricity for a third party.

More than thirty years after ratification of the 1963 Constitution, things changed drastically in the energy world when the Federal Energy Regulatory Commission (FERC) issued Order No. 888, 61 Fed Reg 21540 (May 10, 1996).<sup>1</sup> Order No. 888 directed utilities to file open access transmission tariffs and required transmission owners to provide open access to users of the transmission system.

---

<sup>1</sup> See also FERC Order 888–A, 62 Fed Reg 12274 (March 14, 1997).

Or, put another way, “[t]o allow third-party access to the wholesale market by an integrated national transmission network.” Richard F. Vander Veen, *Michigan Is Now Entering A New Electrical Energy Field: Competition*, Mich BJ 164 (1999). For the first time, electric providers were required to open their transmission systems to provide transmission service to transmit third parties’ electricity.

The United States Supreme Court has explained that the services ordered by Order No. 888 were a brand-new type of service: “unbundled interstate transmissions of electric energy have never been “subject to regulation by the States,” 16 USC § 824(a). Indeed, unbundled transmissions have been a recent development.” *New York v FERC*, 535 US 1, 21 (2002). In 1996, Detroit Edison and Consumers Energy received FERC approval for a Joint Open Access Transmission Tariff; this was the first time either company had a tariff for this new type of commercial service.

For a limited time from 1996 through 2001, public utilities Detroit Edison and Consumers Energy provided unbundled wholesale transmission service as required by FERC. During this period, Detroit Edison and Consumers Energy were regulated by both the FERC, for transmission service, and the MPSC, for generation and distribution service. FERC has exclusive jurisdiction over the rates, charges, and rules and regulations pertaining to transmission services pursuant to various provisions of the Federal Power Act (FPA), 16 USC § 824 *et seq.* *Mississippi Power & Light Co v Mississippi ex rel Moore*, 487 US 354, 371(1988). The MPSC, in



turn, cannot regulate the rates, charges, and rules and regulations pertaining to transmission services because the FPA preempts state regulation in this area. *Id.*

In 2000, Michigan enacted the “Customer Choice and Electricity Reliability Act,” Public Act 141. Act 141, among other things, allowed public utilities to divest their transmission systems to an independent entity:

Each investor-owned electric utility in this state shall, at the utility’s option, either join a FERC approved multistate regional transmission system organization or other FERC approved multistate independent transmission organization or divest its interest in its transmission facilities to an independent transmission owner. [MCL 460.10w(1).]

Essentially, the Michigan Legislature recognized that transmission service is not a service traditionally provided by public utilities, and when the federal government required provision of this service by owners of transmission assets, the Michigan Legislature allowed public utilities to get out of the business. By divesting their transmission assets, Michigan public utilities did not have to provide federally required unbundled transmission service and would escape FERC jurisdiction. In essence, in divesting their transmission assets, public utilities became buyers of a service they had previously provided to themselves.

In 2001, pursuant to Act 141, Detroit Edison divested its transmission assets to ITC Holdings, Inc. Consumers Energy divested its transmission assets to METC. ITC Holdings ultimately purchased METC in 2006. The FERC has exclusive jurisdiction to regulate transmission companies, including METC, and the MPSC has no regulatory jurisdiction over transmission service. But, “unlike the regulation of natural gas, a field in which FERC has jurisdiction both over pricing and over the siting of interstate lines, see 15 USC § 717f(c), the states retain authority over the

location and construction of electrical transmission lines.” *Illinois Commerce Comm’n v Fed Energy Regulatory Comm’n*, 721 F3d 764, 773 (CA 7 2013) citing 16 USC § 824(b)(1); *New York*, 535 US at 24. This case arose under the MPSC’s authority over the location and construction of electrical transmission lines pursuant to the Certification Act.

Neither METC, nor its parent company ITC Holdings, nor the transmission service they provide, could have been contemplated as “public utilities” in 1963, as these types of companies and services not only did not exist in 1963, but also do not fit the definition of “public utility.” A public utility is a state-regulated company providing a commodity or service like electricity to the public. METC is not state-regulated. METC does not provide any commodity or service to the public. Thus, METC is not a “public utility” under Art 7, § 29 of the Michigan Constitution.

## **II. As METC is not a public utility, this Court need not address the question whether the Certification Act is constitutional.**

As METC is not a public utility for the purposes of Art 7, § 29, this constitutional provision does not apply to METC’s transmission line. Thus, as Art 7, § 29 is not implicated in this matter, this Court need not reach the question whether the Certification Act, specifically MCL 460.570(1), unconstitutionally conflicts with the first sentence of Art 7, § 29. This Court has explained that it “will not unnecessarily decide constitutional issues, and it is an undisputed principle of judicial review that questions of constitutionality should not be decided if the case may be disposed of on other grounds.” *J & J Const Co v Bricklayers & Allied*

*Craftsmen, Local 1*, 468 Mich 722, 734 (2003) citing *People v Riley*, 465 Mich 442, 447 (2001) and *MacLean v Michigan State Bd of Control for Vocational Ed*, 294 Mich 45, 50 (1940). This Court should not break with this longstanding principle here.

Though the Township's consent right reserved by the first sentence of Art 7, § 29 does not apply under these limited circumstances, that right is separate and distinct from the Township's right to reasonable control over its streets and public places, which unquestionably still applies to METC. In this Court's decision in *City of Taylor v The Detroit Edison Co*, 475 Mich 109, 123 (2006), this Court held that "a local unit of government may exercise reasonable control over its 'highways, streets, alleys, and public places' as long as that regulation does not conflict with state law." The state law at issue in *City of Taylor* was a MPSC regulation. *Id.* Similarly, in this case, the Commission issued a Certificate pursuant to its express statutory authority granted by the Certification Act, specifically MCL 460.568, which permits METC to construct its transmission line located aboveground. As acknowledged in *City of Taylor*, when the MPSC exercises the authority delegated to it by the Legislature, it is an exercise of state law. *City of Taylor*, 475 Mich at 123. The Certification Act provides that:

If the commission grants a certificate under this act, that certificate shall take precedence over a conflicting local ordinance, law, rule, regulation, policy, or practice that prohibits or regulates the location or construction of a transmission line for which the commission has issued a certificate. [MCL 460.570(1).]

As explained in more detail in the Commission's principal brief, the Township's ordinance requiring METC to construct its transmission line located underground is

in direct conflict with the Certificate, which approves construction of METC's transmission line located aboveground. As this Court explained in the *City of Taylor*, "to the extent an ordinance conflicts with state law, the ordinance exceeds the municipality's power to exercise 'reasonable control' over its streets and is invalid." *City of Taylor*, 475 Mich at 112. This Court should thus affirm the Commission's Order finding METC did not have to comply with the Township's conflicting ordinance.

### **CONCLUSION AND RELIEF REQUESTED**

The Michigan Constitution protects the right of municipalities like Oshtemo Township to reasonably grant or withhold consent only to public utility activities within its borders. METC is not a public utility for the purposes of a municipality's consent right. As such, this Court need not reach the question whether the Certification Act is in conflict with the Constitution. The Township does retain the right to reasonable control over its roads and public spaces, but this right is constrained by state law. The Township's ordinance requiring construction of METC's transmission line located underground conflicts with state law, which in this case is the Commission's Certificate approving construction of the transmission line located aboveground. The ordinance must cede to state law.

For these reasons, and those set out in its principal brief, the Michigan Public Service Commission respectfully requests that this Court affirm.

Respectfully submitted,

Bill Schuette  
Attorney General

Aaron D. Lindstrom (P72916)  
Solicitor General

Matthew Schneider (P62190)  
Chief Legal Counsel

B. Eric Restuccia (P49550)  
Counsel of Record

/s/ Lauren D. Donofrio  
Lauren D. Donofrio (P66026)  
Steven D. Hughey (P32203)  
Assistant Attorneys General  
Attorneys for Appellee MPSC  
7109 W. Saginaw Hwy., 3<sup>rd</sup> Fl.  
Lansing, MI 48917  
Telephone: (517) 284-8140

Dated: October 14, 2016  
150695/Supplemental Brief